MONTANA LEGISLATIVE HISTORY

Chapter 255 1993

Bill H _____ S 275 Original bill & history ✓ C

H. Committee on Natural Res		S. Committee on Natural Res	
Hearing Date(s) 3-5	✓ C	Hearing Date(s) 2-8	✓ C
3-8	✓ C	2-9	✓ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
Date Out _____	___ C		

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

3/30 TRANSMITTED TO GOVERNOR
4/02 SIGNED BY GOVERNOR
CHAPTER NUMBER 260
EFFECTIVE DATE: 04/02/93

SB 273 INTRODUCED BY STANG, ET AL.

REMOVE RESTRICTION ON POLICE OFFICERS WORKING ELSEWHERE IN CITY GOVERNMENT

1/28	INTRODUCED		
1/28	REFERRED TO LOCAL GOVERNMENT		
1/28	FIRST READING		
2/11	HEARING		
2/12	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED	49	0
2/15	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO LOCAL GOVERNMENT		
2/23	FIRST READING		
3/04	HEARING		
3/05	COMMITTEE REPORT—BILL CONCURRED		
3/05	PLACED ON CONSENT CALENDAR		
3/08	3RD READING CONCURRED	98	0
	RETURNED TO SENATE		
3/13	SIGNED BY PRESIDENT		
3/15	SIGNED BY SPEAKER		
3/16	TRANSMITTED TO GOVERNOR		
3/18	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 124		
	EFFECTIVE DATE: 03/18/93		

SB 274 INTRODUCED BY KEATING, ET AL.

EXCLUDE TIPS FROM WAGES UNDER WORKERS' COMPENSATION AND UNEMPLOYMENT LAWS

1/29	INTRODUCED		
1/29	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/29	FIRST READING		
1/29	FISCAL NOTE REQUESTED		
2/04	FISCAL NOTE RECEIVED		
2/06	FISCAL NOTE PRINTED		
2/16	HEARING		
2/22	TABLED IN COMMITTEE		

SB 275 INTRODUCED BY WELDON, ET AL.

PROVIDE CIVIL PENALTY OR CRIMINAL PENALTY FOR UNAPPROVED STREAMBED MODIFICATION

1/29	INTRODUCED		
1/29	REFERRED TO NATURAL RESOURCES		
1/29	FIRST READING		
1/29	FISCAL NOTE REQUESTED		
2/04	FISCAL NOTE RECEIVED		
2/05	FISCAL NOTE PRINTED		
2/08	HEARING		
2/10	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/12	2ND READING PASSED	50	0
2/13	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO NATURAL RESOURCES		

2/23	FIRST READING		
3/05	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/13	2ND READING CONCURRED	82	16
3/16	3RD READING CONCURRED	69	30
	RETURNED TO SENATE WITH AMENDMENTS		
3/19	2ND READING AMENDMENTS CONCURRED	47	0
3/20	3RD READING AMENDMENTS CONCURRED	41	0
3/24	SIGNED BY PRESIDENT		
3/26	SIGNED BY SPEAKER		
3/29	TRANSMITTED TO GOVERNOR		
3/31	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 255		
	EFFECTIVE DATE: 10/01/93		

SB 276 INTRODUCED BY VAN VALKENBURG, ET AL.

INCREASE PENALTY FOR EMPLOYER ATTACHING POLITICAL INFORMATION TO PAYCHECKS

1/29	INTRODUCED		
1/29	REFERRED TO STATE ADMINISTRATION		
1/29	FIRST READING		
1/29	FISCAL NOTE REQUESTED		
2/04	FISCAL NOTE RECEIVED		
2/04	FISCAL NOTE PRINTED		
2/11	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED		
2/17	2ND READING PASSED	34	14
2/18	3RD READING PASSED	38	12
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO STATE ADMINISTRATION		
2/23	FIRST READING		
3/16	HEARING		
3/17	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	62	30
3/30	3RD READING FAILED	47	50
3/31	MOTION FAILED TO RECONSIDER PREVIOUS ACTION	47	50

SB 277 INTRODUCED BY BIANCHI, ET AL.

REQUIRE SIGNS RATHER THAN ORANGE PAINT AS METHOD OF POSTING PRIVATE PROPERTY

1/29	INTRODUCED		
1/29	REFERRED TO JUDICIARY		
1/29	FIRST READING		
2/10	HEARING		
2/19	TABLED IN COMMITTEE		

SB 278 INTRODUCED BY CHRISTIAENS, ET AL.

REVISE LAWS RELATED TO EDUCATIONAL SERVICES IN CHILDREN'S TREATMENT FACILITIES

BY REQUEST OF SUPERINTENDENT OF PUBLIC INSTRUCTION

1/29	INTRODUCED		
1/29	REFERRED TO FINANCE & CLAIMS		
1/29	FIRST READING		
1/29	FISCAL NOTE REQUESTED		
2/06	FISCAL NOTE RECEIVED		
2/09	FISCAL NOTE PRINTED		

Senate BILL NO. 275

INTRODUCED BY J.A. Wilson, Hellowtail, Jay, Hagen, Schultz, VanValkenburg, Bartlett, Jergeson

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PERSON WHO INITIATES A STREAMBED MODIFICATION PROJECT WITHOUT CONSENT IS SUBJECT TO A CIVIL PENALTY AS WELL AS A CRIMINAL PENALTY; PROVIDING FOR DISPOSITION OF PENALTY PROCEEDS; PROVIDING THAT PENALTY PROCEEDS MAY NOT BE USED TO REDUCE CONSERVATION DISTRICT ASSESSMENTS; AND AMENDING SECTION 75-7-123, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-7-123, MCA, is amended to read:

"75-7-123. Initiating project without consent -- ~~penalty~~ penalties -- restoration -- disposition of penalty proceeds. (1) Any person initiating a project without written consent of the supervisors is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $500 or by a civil penalty of not less than $25 or more than $500, or both, for each day that person continues to physically alter or modify the stream, and in addition, that person shall restore, at the discretion of the court, the damaged stream, as recommended by the team and approved by the supervisors, to as near its prior condition as possible.

(2) Civil penalties collected under subsection (1) must be deposited in the same manner as county tax funds under 76-15-523. A district in which a violation occurs must upon demand receive all or a portion of the money deposited under this subsection and shall deposit the money in a bank or financial institution for use by the district.

(3) Money collected and deposited under this section may not be used by a board of county commissioners to reduce the assessments required by Title 76, chapter 15, part 5, to fund a district."

-End-

SB 275
INTRODUCED BILL

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0225	RYE, DAVID 1/20	2/01	ENERGY POLICY DEVELOPMENT PROCESS	PASS AS AMENDED 2/5		2/06
SB0231	YELLOWTAIL, BILL 1/21	2/10	2/10	DO PASS 2/13		2/15
SB0248	YELLOWTAIL, BILL 1/25	2/10	REMOVE SURFACE OWNER CONSENT FOR STRIP-MINING	DO PASS 2/10		2/11
SB0253	GAGE, DEL 1/26	2/08	ELIMINATE ENVIRONMENTAL QUALITY COUNCIL	TABLED ON 02/10		
SB0261	DOHERTY, STEVE 1/26	2/03	SUBDIVISION REVISION	DO PASS 2/5		2/09
SB0275	WELDON, JEFF 1/29	2/08	CIVIL PENALTY OR CRIMINAL PENALTY FOR UNAPPROVED STREAMBED MODIFICATION	PASS AS AMENDED 2/9		2/10
SB0280	GROSFIELD, LORENTS 1/30	2/17	STATE WATER PLAN -- WATER QUALITY/QUANTITY	DO PASS 2/18		2/19
SB0282	SWYSGOOD, CHUCK 1/30	2/17	BASIN CLOSURE -- JEFFERSON & MADISON RIVER BASINS	PASS AS AMENDED 2/18		2/19
SB0284	WELDON, JEFF 1/30	2/13	UNDERGROUND TANK INSTALLER PERMIT	PASS AS AMENDED 2/16		2/17
SB0294	KEATING, TOM 2/01	2/15	DEFINING THE TERMS "COAL", "GAS", AND "OIL" AND CLARIFYING "HYDROCARBONS"	PASS AS AMENDED 2/16		2/17
SB0296	GROSFIELD, LORENTS 2/02	2/10	STATE WATER PLAN -- WELL DRILLER RULES	DO PASS 2/13		2/15
SB0311	JERGESON, GREG 2/03	2/08	DEFINITION AND EFFECT OF OIL AND GAS DIVISION ORDER	DO PASS 2/9		2/10

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on February 8, 1993, at 1:03 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 311, SB 253, SB 275
Executive Action: None.

HEARING ON SB 311

Opening Statement by Sponsor:

Senator Greg Jergeson, Senate District 8, stated SB 311 would define the division order for the distribution of oil or gas proceeds. He said the division order must be "in line" with the lease before the proceeds may be distributed. Senator Jergeson stated he is not a royalty owner and has no personal experience with a division order for an oil or gas lease. He added,

HEARING ON SB 275

Opening Statement by Sponsor:

Senator Jeff Weldon, Senate District 27, stated SB 275 was drafted at the request of the Montana Association of Conservation Districts to assist them in enforcing the Natural Streambed Land Preservation Act. He said SB 275 would assist the Association in the enforcement of streambed permits by adding civil and criminal penalties for violation of the law.

Proponents' Testimony:

Mr. Mike Volesky, Vice-President, Montana Association of Conservation Districts, spoke from prepared testimony in support of SB 275 (Exhibit #10). He also submitted letters in support of SB 275 from three different county attorneys (Exhibits #11-13).

Mr. Ray Beck, Department of Natural Resources, stated his support for SB 275. He said his department administers the conservation district laws. Mr. Beck said the workload for the districts and county attorneys in administering regulations and penalties is significant.

Mr. Stan Bradshaw, Trout Unlimited, stated problems exist with the enforcement of current streambed regulations. He said SB 275 would adequately penalize those individuals who refuse to comply with existing law.

Mr. Ron Cunningham, Montana Fishing and Outfitters Association, stated his support for SB 275.

Ms. Janet Ellis, Montana Audubon Legislative Fund, stated her support for SB 275.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Grosfield asked Mr. Beck if guilt beyond a reasonable doubt had to be proven in a criminal case, to which Mr. Beck replied yes.

Senator Grosfield asked Mr. Beck who received the revenue generated from criminal penalties. Mr. Beck replied the revenue is given to the counties.

Senator Bartlett stated subsection 2 authorizes the district in which a violation occurred to deposit the revenue collected into a bank account. She asked Mr. Beck if the district had a bank account separate from the county treasurer in which they could deposit this money. Mr. Beck replied districts already have the authority to maintain their own bank accounts and SB 275 would allow them to exercise the same authority with respect to fines.

Senator Hockett asked Mr. Volesky if SB 275 would minimize some of the problems currently associated with processing 310 permits. Mr. Volesky replied it would and added SB 275 provides some funding to offset the cost of processing the permits.

Senator Swysgood asked Mr. Bradshaw what the criminal penalty would be for violation of the permit. Mr. Bradshaw replied a "fine" and "criminal penalty" were one in the same.

Senator Weeding asked Mr. Beck what the payment was for administering 310 permits. Mr. Beck replied the workload associated with administering 310 permits was significant and the law allows the districts to pay mileage and per diem expenses.

Closing by Sponsor:

Senator Weldon requested the Committee defer executive action on SB 275 until he had the opportunity to review a potential amendment to the bill.

ADJOURNMENT

Adjournment: 3:00 p.m.

Don Bianchi
SENATOR DON BIANCHI, Chair

Leanne Kurtz
LEANNE KURTZ, Secretary

DB/lk

ROLL CALL

SENATE COMMITTEE Natural Resources DATE 2/8

NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	X		
Sen. Hockett	X		
Sen. Bartlett	X		
Sen. Doherty	X		
Sen. Grosfield	X		
Sen. Keating	X		
Sen. Kennedy	X		
Sen. Swift	X		
Sen. Suvsgood	X		
Sen. McClernan	X		
Sen. Treat	X		
Sen. Weeding	X		
Sen. Weldon	X		

FC8

Attach to each day's minutes

NATURAL STREAMBED AND LAND PRESERVATION ACT, aka 310 LAW

A. BACKGROUND

MONTANA CONSERVATION DISTRICTS ADMINISTER THE NATURAL STREAMBED AND LAND PRESERVATION ACT FOR THE PURPOSE OF PROTECTING THE BED AND BANKS OF PERENNIAL-FLOWING STREAMS. THE ACT IS INTENDED TO MAINTAIN THE NATURAL STATE OF RIVERS AND STREAMS BY MINIMIZING EROSION AND SEDIMENTATION, WHILE RECOGNIZING THE NEEDS OF AGRICULTURAL, RECREATION, AND OTHER WATER USES.

ANY PERSON CONTEMPLATING AN ACTION WHICH IMPACTS THE BED OR BANKS ADJACENT TO A STREAM MUST OBTAIN A PERMIT FROM THE LOCAL CONSERVATION DISTRICT. PROPOSED PROJECTS ARE INSPECTED BY A TEAM COMPOSED OF A DISTRICT SUPERVISOR; A DEPARTMENT OF FISH, WILDLIFE, AND PARKS REPRESENTATIVE; AND THE LANDOWNER. THE DISTRICT BOARD OF SUPERVISORS MAKES THE FINAL PERMITTING DECISION, WHICH IS SUBJECT TO ARBITRATION IF REQUESTED BY ANY MEMBER OF THE REVIEW TEAM. VIOLATORS OF THE ACT ARE SUBJECT TO A MISDEMEANOR FINE OF NOT LESS THAN $25 OR MORE THAN $500 PER DAY, IF CONVICTED. IN MOST CASES, HQWEVER, VIOLATORS REMEDY THE SITUATION BEFORE FINES BECOME NECESSARY.

B. LOCAL ADMINISTRATION

ADMINISTRATION OF THE 310 PERMIT PROGRAM HAS BEEN QUITE SUCCESSFUL BECAUSE THE EFFORT IS CONDUCTED LOCALLY BY PEOPLE WITH DIRECT KNOWLEDGE OF CONDITIONS IN THE PROJECT AREA. THE DISTRICTS ASSOCIATION WITH THE LOCAL TECHNICAL STAFF OF THE USDA SOIL CONSERVATION SERVICE; THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AND LOCAL LANDOWNERS HAS PROVEN EFFECTIVE IN MEETING THE INTENT OF THE LAW. DISTRICTS FEEL THAT COOPERATION, EDUCATION, AND LOCAL INPUT ARE MORE EFFECTIVE AND EFFICIENT THAN REGULATION AND CONFRONTATION.

SENATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE 2/6/93
BILL NO. SB 275

C. THE CURRENT SITUATION

CONSERVATION DISTRICTS HAVE TAKEN A SERIOUS APPROACH TO THEIR 310 RESPONSIBILITIES. AS A RESULT, MUCH TIME, EFFORT, AND RESOURCES HAVE BEEN DIRECTED TOWARD THIS GROWING EFFORT.

SINCE ITS INCEPTION IN 1975, THE NUMBER OF PERMIT APPLICATIONS HAVE INCREASED SUBSTANTIALLY DUE TO PUBLIC AWARENESS. MANY DISTRICTS HAVE BEEN FORCED TO CURTAIL OTHER ACTIVITIES TO EFFECTIVELY ADMINISTER THE STAGGERING FLOW OF APPLICATIONS. IN MANY CASES, SPECIAL DISTRICT MEETINGS ARE REQUIRED TO HANDLE 310 APPLICATIONS, AND MEETINGS OFTEN LAST SIX HOURS OR MORE (OFTEN UNTIL 2:00 A.M.) BECAUSE OF PERMIT VOLUME.

TO ENCOURAGE VOLUNTARY PARTICIPATION IN THE 310 PROGRAM, DISTRICTS DO NOT LEVY A PERMIT FEE, AND NO EXTERNAL FUNDING IS AVAILABLE TO THE DISTRICTS FOR 310 ADMINISTRATION. ALTHOUGH SUPERVISORS VOLUNTEER THEIR TIME AT MEETINGS, 310 ADMINISTRATION HAS PUT SEVERE PRESSURE ON ALREADY LIMITED DISTRICT BUDGETS.

IN ADDITION TO PROCESSING 310 APPLICATIONS, SUPERVISORS OFTEN SPEND CONSIDERABLE TIME AND EFFORT, ON ARBITRATION OF DECISIONS AND ENFORCEMENT OF 310 VIOLATIONS. NEEDED LEGAL SUPPORT IS USUALLY VERY DIFFICULT TO OBTAIN FROM COUNTY ATTORNEYS BECAUSE OF LOCAL PRIORITIES AND TIME REQUIREMENTS ASSOCIATED WITH ENFORCEMENT. THOSE COUNTY ATTORNEYS WHO ARE WILLING TO OVERLOOK THESE PRIORITIES AND TIME REQUIREMENTS HAVE HAD A DIFFICULT TIME PROSECUTING 310 VIOLATIONS FOR THREE REASONS:

1) IN A CRIMINAL PROSECUTION, THE STATE HAS TO PROVE ITS CASE BEYOND A REASONABLE DOUBT. IN A CIVIL CASE, ALL THAT IS NEEDED IS PROOF THROUGH A PREPONDERANCE OF EVIDENCE.
2) A JURY IS OFTEN HESITANT IN SUCH A CASE TO CALL SUCH A VIOLATION A CRIMINAL ACT.

3) THE MANNER IN WHICH JURY INSTRUCTIONS MUST BE DRAFTED REQUIRES THAT THE JURY APPLIES THE POLICY OF THE STATE OF MONTANA WITH LITTLE OR NO FIRST-HAND KNOWLEDGE OF THE SUBJECT. IN ADDITION, IT REQUIRES THE JURY TO DETERMINE WHETHER OR NOT A VIOLATOR ACTUALLY "SIGNIFICANTLY ALTERED OR MODIFIED A STREAM."

EXHIBIT #10
DATE 2-8-93
SB-275

A LOOK AT PERMIT #'s OF FIVE CONSERVATION DISTRICTS

CONSERVATION DISTRICT	NO. OF PERMITS ISSUED IN 1992	VIOLATIONS IN 1992*
MISSOULA CO. CD	77	2
CARBON CO. CD	48	10 (In last 5 years)
BITTERROOT CD (Ravalli Co.)	64	8
LAKE CO. CD	Approx. 25-30	4
FLATHEAD CO. CD	Approx. 200	Approx. 20-30

*IT IS IMPORTANT TO NOTE THAT NOT ALL VIOLATIONS MAKE IT TO COURT.

EXHIBIT #10
DATE 2-8-93
SB-275

SUMMARY OF DOCUMENTATION OF THE PROBLEM

FIRST DOCUMENT IS A JANUARY 15, 1993 LETTER TO SENATOR JEFF WELDON FROM MISSOULA DEPUTY COUNTY ATTORNEY MARNIE MCCLAIN. MS. MCCLAIN ADDRESSES THE BROAD MANNER IN WHICH THE EXISTING LAW IS WRITTEN AND THE ADVANTAGES OF A CIVIL PENALTY.

SECOND DOCUMENT IS AN AUGUST 6, 1992 LETTER TO LAKE COUNTY CONSERVATION DISTRICT SUPERVISOR DENNIS DEVRIES FROM LAKE COUNTY ATTORNEY LARRY NISTLER. IN IT MR. NISTLER ADDRESSES BURDEN OF PROOF AND CIVIL PENALTIES ALLOWED UNDER OTHER STREAM PERMITTING LAWS. HE AS WELL RECOMMENDS AMENDING CURRENT LAW TO INCLUDE CIVIL PENALTIES.

THIRD DOCUMENT IS A MAY 12, 1992 LETTER TO DON MACINTYRE, CHIEF LEGAL COUNSEL AT DNRC. IT IS FROM RAVALLI COUNTY ATTORNEY GEORGE CORN, WHO SPEAKS TO THE VAGUENESS OF THE EXISTING LAW, THE REQUIRED BURDEN OF PROOF, AND THE EASE WITH WHICH ACTION MIGHT BE TAKEN IF THERE WERE A CIVIL OPTION.

11

Missoula County Facsimile Message

TO: MACo
Attention: Steve Meyers

FROM: Marnie McClain
Deputy County Attorney

DATE: January 21, 1993

SENATE NATURAL RESOURCES
EXHIBIT NO. 11
DATE 2-8-93
BILL NO. SB 275

OF PAGES INCLUDING COVER: 3

OUR FAX # IS: (406) 721-4043

OUR TELEPHONE NUMBER IS: (406) 721-5700 EXT. 3254

MESSAGE:

This is the letter I have faxed to Jeff Weldon

(406) 721-5700
FAX # (406) 523-4803

Senator Jeff Weldon
Helena, MT

January 15, 1993

Re: The Natural Streambed and Land Preservation Act

Dear Senator Weldon:

I am writing at the request of the Missoula County Conservation District with some proposed changes for The Natural Streambed and Land Preservation Act. The proposed changes are intended only to clarify prohibited conduct and not to expand the scope of the Act.

One of the problems with the Act is found with the definition of "project" at Section 75-7-103(5). The definition reads as follows: "Project means a physical alteration or modification of a stream in the state of Montana which results in a change in the state of the stream in contravention of Section 75-7-102." Section 75-7-102 is the policy statement for the Act and reads as follows: "It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and in so doing to keep soil erosion and sedimentation to a minimum except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by the Constitution of the State of Montana." As you can see, the policy statement is quite broad. Its multiple parts confound efforts to state precisely the definition of project. The following definition of project is proposed: "Project means a physical alteration or modification of a stream in the state of Montana which results in a change in the natural or existing state of the stream."

Section 75-7-123 is the penalty section of the Act. Although it is fairly clear, the proposed amendments would make violation of the Act an absolute liability offense and provide for a civil penalty in addition to the criminal penalty. In a absolute liability offense, a person may be guilty of an offense as to each element thereof, without having acted purposely, knowingly or negligently. The proposed amendments for Section 75-7-123 are as follows:
(1) A person is guilty of an offense under this section if he: (a) initiates a project without written consent of the supervisors or

EXHIBIT #11
DATE 2-8-93
SB-275

contrary to a material permit condition; (b) omits material information or makes any false statement or representation in a permit application or during an on-site inspection.
(2) Any person in violation of this section is absolutely liable as provided in Section 45-2-104 MCA.

Lastly, I have proposed adding a civil penalty, which would allow for a larger fine than is allowed under a misdemeanor conviction. This section would address repeat violators and wealthy violators who may not experience a $500.00 fine as a significant deterrent.

Criminal Penalty Section.
(1) A person who violates Section 75-7-123 (1) MCA shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $500 for each day that person continues to physically alter or modify the stream. In addition, that person shall restore, at the discretion of the court, the damaged stream, as recommended by the team and approved by the supervisors, to as near to its prior condition as possible.
Civil Penalty
(1) Any person who violates Section 75-7-123 is subject to a civil penalty not to exceed $10,000 per violation. Each day of violation constitutes a separate violation.
(2) Action under this section does not bar action under Section 75-10-418.

Thank you for your interest and any assistance you can give.

Sincerely,

Martha E. McClain
Deputy County Attorney

UNITED STATES DEPARTMENT OF AGRICULTURE-FARMERS HOME ADMINISTRATION

Form FmHA 2030-8
(Rev. 7-90)

FACSIMILE TRANSMISSION

Check box for: SECURE FAX TRANSMISSION ☐

DATE: 2/1/93

SENATE NATURAL RESOURCES
EXHIBIT NO. 12
DATE 2-8-93
BILL NO. SB 275

(2)

SUBJECT: 310 - Civil - Criminal

TO:

~~FARMERS HOME ADMINISTRATION~~	STATE: MT
Attention: Mike Volesky	
Receiving Agency or Organization if other than FmHA: MACD	
Facsimile Telephone Number: FTS ( ) Commercial ( ) 449-0119	
Telephone Number of Recipient: FTS ( ) Commercial ( )	

FROM:

Name of Sender: SCS - LK. Co. Cons. Dist.	
Division	
Room Number	
Telephone Number: FTS ( ) Commercial ( ) 883-5875	

COMMENTS: Call if you need anything else. Chris

Authorized By: *(Division Director or Branch Chief)*

Transmission Completed By:	No. of Pages *(incl. this sheet)*: 3

After the transmission has been completed, the original will be returned to the sender by interoffice mail unless other instructions are given in the comment section above.

FmHA 2030-8 (Rev. 7-90)
*U.S. GPO: 1990-754-008/21507

LAKE COUNTY ATTORNEY'S OFFICE

LAKE COUNTY COURTHOUSE
106 FOURTH AVENUE EAST
POLSON, MONTANA 59860-2183
(406) 883-6211

Larry J. Nistler, County Attorney
Mitchell A. Young, Deputy
Kathleen O'Rourke-Mullins, Deputy

Administrative Assista
Susan
Marty Co

August 6, 1992

Dennis Devries
Lake County Board of Conservation District
P.O. Box 766
Polson, Montana 59860

Dear Dennis:

Pursuant to the request of the County Supervisors and your letter of June 25, 1992, I have again reviewed the Jim Creek and Piper Creek project activities by Plum Creek for possible criminal prosecution. In doing so, I reviewed the permit, the modified permit, the numerous items of correspondence and reports, photos from Scott Rumsey and the applicable Montana law. I also reviewed this matter with Don McIntyre, legal counsel for the State Department of Natural Resources.

As I previously advised you, I am confident that the Streamside Management Act (SMA) and the Streambed and Land Preservation Act (SLPA) can and do overlap in providing jurisdiction to your conservation district in this case. Violations of either of these acts may also constitute a violation of the Montana Water Quality Act. (MWQA)

As you know, conservation districts supervise enforcement of the SLPA, the Department of State Lands supervises enforcement of the SMA, and the Department of Health and Environmental Sciences supervises enforcement of violations of the MWQA. However, violations of SMA or MWQA are civil violations with civil penalties. Complaints only need be proven by a preponderance of the evidence. Violations of SLPA are criminal and result in criminal penalties. These complaints must be proven "beyond a reasonable doubt", placing a much higher burden of proof on the conservation district in pursuing its complaint.

In assessing this case for criminal prosecution, it appears that this would be something of a "test" case as there is little or no precedent. In speaking with Mr. McIntyre, he noted that Ravalli County has attempted criminal prosecutions of this kind without success. The facts of the case are muddied by the modification of the original permit on February 4, 1992, the conflicting reports from Steve Tralles of the Department of Health and Environmental Sciences, and the conflicting reports of Bill Fischer of the Department of State Lands.

EXHIBIT #12
DATE 2-8-93
SB-275

As Mr. Fischer found a civil violation of SMA, he could have sought a civil penalty, but did not. Mr. Tralles' latest report, dated July 1, 1992 states that he now finds a civil violation of MWQA, but does not indicate whether he will seek a civil penalty.

It is my opinion that a criminal charge in this case would not be successful and that the facts of this case do not make it a good "test case" to establish a precedent. Therefore, I am declining to file a criminal complaint and am recommending that your board seek a legislative amendment to MCA 75-7-123. Specifically, those portions of the penalty section which refer to the violations as being criminal should be amended to make them civil. This would greatly enhance your ability to pursue penalties for violations of your permit process.

Sincerely,

LARRY J. NISTLER
Lake County Attorney

LJN:mc

R A V A L L I C O U N T Y A T T O R N E Y
COURTHOUSE BOX 5008, HAMILTON, MT 59840
(406) 363-4440

George H. Corn
County Attorney

Gerald D. Williams
Deputy Attorney

May 12, 1992

3

Donald MacIntyre, Chief Legal Counsel
Department of Natural Resources
1520 East Sixth Avenue
Helena, MT 59620-2301

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 2-8-93
BILL NO. SB 275

Re: State v. Varner

Dear Don:

As you know, this case was brought pursuant to Section 75-7-123, M.C.A. The case was resolved before the jury was picked, by the Defendant's agreement to pay $1,500, in return for which I dismissed the charges against him. I believe this was the best resolution of the matter that could be achieved. Don Peters of the Missoula Office of Fish, Wildlife & Parks, who is advising the Conservation District on the stream rehabilitation, felt that it was a good resolution.

I have some real concerns with using this law for criminal prosecutions in the future, however, particularly in a situation like this, where the defendant applied for a permit but then exceeded its scope.

My concern is with the vagueness of the law when used as the basis for a criminal prosecution. In support of that, I have included several jury instructions that I drafted, there being no approved or model instructions or, indeed, any cases on the same. As you can see, the jury instructions are quite vague. This would leave it open for the defense attorney to argue that the law does not put one on notice of what conduct is prohibited and, hence, the void-for-vagueness argument applies.

Further, as I feel the instructions must be drafted, the jury is required to apply the "policy" of the State of Montana to the defendant's actions. The jury is further required to determine whether or not the project "significantly altered or modified a stream." Furthermore, although I termed this last phase an affirmative defense, there is no case that says that would be required of the defendant. What's a judge to do in such a situation.

In sum, I was quite afraid, after drafting instructions, that the judge might toss the whole thing out as too vague to support a criminal prosecution. However, that could be because I don't have a deft hand at drafting instructions. Accordingly, please feel free to criticize and comment on these instructions, and please don't hesitate to tell me that I am mistaken.

One solution, which we have previously discussed, would be to include a civil penalty in the law. This would give a county attorney the option of going civil or criminal, depending on the person's actions. A civil suit also has the advantage of the State having to prove its case only by a preponderance of the evidence, as opposed to beyond a reasonable doubt in a criminal case. It is my feeling that since the person accused of committing this "crime" is not the "average" misdemeanant, jurors are usually going to be sympathetic to the person. Having a civil option removes the burden of having to prove that a well-meaning but uninformed person committed a criminal act. This is easier on jurors and prosecutors. The criminal penalty would still exist for egregious actions, so you still might want to consider clarifying language.

In closing, let me thank you for your brief. As you know, I was not able to add it on appeal because the judge ruled that the Department was not a party. Fortunately, we were able to convince the judge not to dismiss the case anyway. However, legislation could and should be drafted that would allow the Department to become a party. I believe this would be quite easy if the civil option were available.

I have taken the liberty of sending a copy of it to Stan Bradshaw, since he has expressed an interest in this matter, as well. I am also sending a copy to the Bitterroot Conservation District.

Thank you again for your help in this. Please don't hesitate to call if you have any questions.

Sincerely,

George H. Corn
Ravalli County Attorney

GHC:se
cc: Stan Bradshaw, 824 9th Avenue, Helena, MT 59601
Bitterroot Conservation District

DATE 2/4

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SB 253, SB 275, SB 311

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Alan Evans	Self - MVD Corp.	253	X	
F.T. Ripley	MSMA	✓		✓
Wayne Van Vuest	"	✓		✓
Susan Cottingham	self - [redacted]	253		✓
Deborah Schmidt	EQC	253		
ROBIN CUNNINGHAM	FISHING OUTFITTERS ASS'N. OF MONTANA	275	X	
Bob Stephens	MT Grain Growers	253		✓
Jack Dale	SELF	253		✓
Jay Beck	DNRC	275	X	
Dave Hoyt	SD 47 - EQC			✓
Mary Millard	MLMOA	311	✓	
Bob Barry	MAFB	253		✓
Russell Fornsh	MLMOA	311	✓	
Janet Ellis	MT Audubon	~~253~~ ~~275~~	✓	✓
Nina Lannan	Self	253		✓
John Fitzpatrick	Self / [redacted] Gill			✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on February 9, 1993, at 5:05 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: Sen. Steve Doherty (D)
Sen. Henry McClernan (D)

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	None.
Executive Action:	SB 158, SB 172, SB 196, SB 253, SB 275, SB 311

EXECUTIVE ACTION ON SB 158

Discussion:

Claudia Clifford, Secretary of the Senate, informed the Committee that indefinitely postponing a bill was not a proper motion in committee. She discussed the purpose of indefinitely postponing a bill, and suggested the Committee consider a different motion.

EXECUTIVE ACTION ON SB 253

Motion:

Senator Weeding moved SB 253 DO NOT PASS.

Substitute Motion/Vote:

Senator Swysgood made a substitute motion to TABLE SB 253. The motion CARRIED with Senators Bianchi, Hockett and Keating voting NO.

EXECUTIVE ACTION ON SB 275

Motion:

Senator Weldon moved SB 235 DO PASS.

Discussion:

Senator Grosfield said SB 275 would create a civil penalty for violations of the 310 Act and earmarks the proceeds for conservation districts. He said he has an amendment (Exhibit #3) which would send the civil penalties to the individual county's general fund.

Motion:

Senator Grosfield moved to AMEND SB 275.

Discussion:

Senator Grosfield said the conservation districts are not a policing entity, adding he is concerned about the fallout to conservation districts if the civil penalty goes directly to them. He stated the conservation districts could be accused of assessing penalties for 310 violations simply for their own benefit.

Senator Hockett said conservation districts are funded by tax revenue and the bill without the amendments would be a departure from the current structure.

Senator Bianchi stated fines assessed by Fish and Game wardens and highway patrolmen go into their retirement funds. He added it is not a new idea for the conservation districts to benefit from the 310 fines.

Vote:

The motion to AMEND SB 275 CARRIED, with Senators Bianchi and Weldon voting NO, and Senator Bartlett absent at the time of the vote.

Motion:

Senator Weldon moved SB 275 DO PASS AS AMENDED.

Discussion:

Senator Grosfield noted that whether a penalty is civil or criminal depends on how an action is brought, and the difference is the level of proof that is needed to establish that a 310 violation occurred.

Vote:

The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 311

Motion/Vote:

Senator Grosfield moved SB 311 DO PASS. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 7:00 p.m.

Don Bianchi
SENATOR DON BIANCHI, Chair

Leanne Kurtz
LEANNE KURTZ, Secretary

DB/lk

ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES DATE 2/9/93

NAME	PRESENT	ABSENT	EXCUSED
Bianchi	✓		
Hockett	✓		
Bartlett	✓		
Doherty			✓
Grosfield	✓		
Keating	✓		
Kennedy	✓		
McClernan			✓
Swift	✓		
Swysgood	✓		
Weeding	✓		
Weldon	✓		
Treit	✓		

F-08

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

February 10, 1993

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration Senate Bill No. 275 (first reading copy -- white), respectfully report that Senate Bill No. 275 be amended as follows and as so amended do pass.

Signed: Don Bianchi
Senator Don Bianchi, Chair

That such amendments read:

1. Title, line 7.
Following: "PENALTY;"
Strike: remainder of line 7

2. Page 1, lines 15 and 16.
Strike: "-- disposition of penalty proceeds"

3. Page 2, lines 1 through 6.
Strike: subsection (2) in its entirety
Renumber: subsequent subsection

-END-

Amd. Coord.
Sec. of Senate

331036SC.San

Amendments to Senate Bill No. 275
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Paul Sihler
February 8, 1993

1. Title, line 7.
Following: "PENALTY;"
Strike: remainder of line 7

2. Page 1, lines 15 and 16.
Strike: "-- disposition of penalty proceeds"

3. Page 2, lines 1 through 6.
Strike: subsection (2) in its entirety
Renumber: subsequent subsection

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 2/9/93
BILL NO. SB 275

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN DICK KNOX**, on March 5, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 225, SB 214, SB 275
Executive Action: None

HEARING ON SB 225

Opening Statement by Sponsor:

SEN. DAVID RYE, SD 47, Billings, said SB 225 sets up methodology for future energy legislation. He also said the Senate Natural Resources committee supported the bill with the new sections.

REP. GILBERT said that the bill does not differentiate between public and private caves nor does it discuss permission from cave owners. **Mr. Roemer** noted that the differentiation was omitted in order to balance cave protection and private landowner rights.

REP. GILBERT asked if there was a marked distinction within the bill regarding who owns cave property.

REP. WELDON replied that Sections 4 and 5 of the bill address property rights.

Closing by Sponsor:

SEN. WELDON said SB 225 has further educated him about cave resources. He said he is willing to work on amendments to the bill that would change the effective date.

HEARING ON 275

Opening Statement by Sponsor:

SEN. JEFF WELDON, SD 27, Arlee, said that SB 275 would provide civil or criminal penalty for unapproved stream-bed modification. He presented amendments to the committee. **EXHIBIT 9**

Proponents' Testimony:

Mike Volesky, Montana Association of Counties (MAC), presented a summary of proponent testimony **EXHIBIT 10** from **Martha E. McClain, Missoula County Deputy Attorney; Larry Nistler, Lake County Attorney**, and **George Corn, Ravalli County Attorney. EXHIBITS 11, 12 and 13, respectively.**

Steve Schmitz, Bureau Chief, Conservation Districts Bureau, Department of Natural Resources and Conservation (DNRC), told the committee he was charged with administering the Streambed Protection Act, initiated in 1975. **EXHIBIT 14**

Jim Jensen, Montana Environmental Information Center (MEIC), on behalf of Lewis and Clark County, said conservation district supervisors are problem solvers. He stated SB 275 will give them an additional tool for solving problems.

Clay Landry, Trout Unlimited, said the bill would protect downstream water users as well as fish and habitat.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. STOVALL asked if the conservation districts would offer technical assistance relating to streambed modification. **Mr. Volesky** replied that MAC would offer some assistance, **EXHIBIT 15,**

therefore, it is important to have funding addressed in the statutes of the bill. He indicated, by law, monies will be directed to the city general fund.

REP. FAGG asked **Mr. Jensen** if it was advisable to use both the words criminal and civil within the bill. **Mr. Jensen** said it is legal to assess criminal and civil penalties. He said once the modification permit is granted, it is impossible to force people into compliance.

Closing by Sponsor:

SEN. WELDON noted that the civil penalty is the main purpose of SB 275. He recommended the committee not adopt the amendment if it will jeopardize the bill.

ADJOURNMENT

Adjournment: 6:45 p.m.

DICK KNOX, Chairman

ROBERTA OPEL, Secretary

DK/ro

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 3/5/93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK KNOX, CHAIRMAN	Y		
REP. ROLPH TUNBY, VICE CHAIRMAN	Y		
REP. JODY BIRD	Y		
REP. VIVIAN BROOKE	Y		
REP. RUSS FAGG	Y		
REP. GARY FELAND	Y		
REP. MIKE FOSTER	Y		
REP. BOB GILBERT	Y		
REP. HAL HARPER	Y		
REP. SCOTT ORR	Y		
REP. BOB RANEY	Y		
REP. DORE SCHWINDEN	Y		
REP. JAY STOVALL	Y		
REP. EMILY SWANSON	Y		
REP. HOWARD TOOLE	Y		
REP. DOUG WAGNER	Y		

HR:1993
wp.rollcall.man
CS-09

EXHIBIT 1
DATE 3-5-93
HB SB 275

Amendments to Senate Bill No. 275
Blue Reading Copy

Requested by Senator Weldon
For the Committee on Natural Resources

Prepared by Doug Sternberg, Council Staff
March 4, 1993

1. Title, line 9.
Following: "PENALTY;"
Insert: "PROVIDING FOR DISPOSITION OF PENALTY PROCEEDS;"

2. Page 1, line 17.
Following: "restoration"
Insert: "-- disposition of penalty proceeds"

3. Page 2, line 8.
Following: "~~district.~~"
Insert: "(2) Civil penalties collected under subsection (1) must be deposited in the same manner as county tax funds under 76-15-523. A district in which a violation occurs must upon demand receive all or a portion of the money deposited under this subsection and shall deposit the money in a bank or financial institution for use by the district in defraying the costs of administering the provisions of this part or costs of providing public information and education regarding streambed protection."
Renumber: subsequent subsection

EXHIBIT 10
DATE 3-5-93
~~HB~~ SB 275

SUMMARY OF DOCUMENTATION OF THE PROBLEM

FIRST DOCUMENT IS A JANUARY 15, 1993 LETTER TO SENATOR JEFF WELDON FROM MISSOULA DEPUTY COUNTY ATTORNEY MARNIE MCCLAIN. MS. MCCLAIN ADDRESSES THE BROAD MANNER IN WHICH THE EXISTING LAW IS WRITTEN AND THE ADVANTAGES OF A CIVIL PENALTY.

SECOND DOCUMENT IS AN AUGUST 6, 1992 LETTER TO LAKE COUNTY CONSERVATION DISTRICT SUPERVISOR DENNIS DEVRIES FROM LAKE COUNTY ATTORNEY LARRY NISTLER. IN IT MR. NISTLER ADDRESSES BURDEN OF PROOF AND CIVIL PENALTIES ALLOWED UNDER OTHER STREAM PERMITTING LAWS. HE AS WELL RECOMMENDS AMENDING CURRENT LAW TO INCLUDE CIVIL PENALTIES.

THIRD DOCUMENT IS A MAY 12, 1992 LETTER TO DON MACINTYRE, CHIEF LEGAL COUNSEL AT DNRC. IT IS FROM RAVALLI COUNTY ATTORNEY GEORGE CORN, WHO SPEAKS TO THE VAGUENESS OF THE EXISTING LAW, THE REQUIRED BURDEN OF PROOF, AND THE EASE WITH WHICH ACTION MIGHT BE TAKEN IF THERE WERE A CIVIL OPTION.

EXHIBIT 11
DATE 3-5-93
SB 275

(406) 721-5700
FAX # (406) 523-4803

Senator Jeff Weldon
Helena, MT

January 15, 1993

Re: The Natural Streambed and Land Preservation Act

Dear Senator Weldon:

I am writing at the request of the Missoula County Conservation District with some proposed changes for The Natural Streambed and Land Preservation Act. The proposed changes are intended only to clarify prohibited conduct and not to expand the scope of the Act.

One of the problems with the Act is found with the definition of "project" at Section 75-7-103(5). The definition reads as follows: "Project means a physical alteration or modification of a stream in the state of Montana which results in a change in the state of the stream in contravention of Section 75-7-102." Section 75-7-102 is the policy statement for the Act and reads as follows: "It is the policy of the state of Montana that its natural rivers and streams and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural or existing state and to prohibit unauthorized projects and in so doing to keep soil erosion and sedimentation to a minimum except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by the Constitution of the State of Montana." As you can see, the policy statement is quite broad. Its multiple parts confound efforts to state precisely the definition of project. The following definition of project is proposed: "Project means a physical alteration or modification of a stream in the state of Montana which results in a change in the natural or existing state of the stream."

Section 75-7-123 is the penalty section of the Act. Although it is fairly clear, the proposed amendments would make violation of the Act an absolute liability offense and provide for a civil penalty in addition to the criminal penalty. In a absolute liability offense, a person may be guilty of an offense as to each element thereof, without having acted purposely, knowingly or negligently. The proposed amendments for Section 75-7-123 are as follows:
(1) A person is guilty of an offense under this section if he: (a) initiates a project without written consent of the supervisors or

contrary to a material permit condition; (b) omits material information or makes any false statement or representation in a permit application or during an on-site inspection.
(2) Any person in violation of this section is absolutely liable as provided in Section 45-2-104 MCA.

Lastly, I have proposed adding a civil penalty, which would allow for a larger fine than is allowed under a misdemeanor conviction. This section would address repeat violators and wealthy violators who may not experience a $500.00 fine as a significant deterrent.

Criminal Penalty Section.
(1) A person who violates Section 75-7-123 (1) MCA shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $500 for each day that person continues to physically alter or modify the stream. In addition, that person shall restore, at the discretion of the court, the damaged stream, as recommended by the team and approved by the supervisors, to as near to its prior condition as possible.
Civil Penalty
(1) Any person who violates Section 75-7-123 is subject to a civil penalty not to exceed $10,000 per violation. Each day of violation constitutes a separate violation.
(2) Action under this section does not bar action under Section 75-10-418.

Thank you for your interest and any assistance you can give.

Sincerely,

Martha E. McClain
Deputy County Attorney

LAKE COUNTY ATTORNEY'S OFFICE
LAKE COUNTY COURTHOUSE
106 FOURTH AVENUE EAST
POLSON, MONTANA 59860-2183
(406) 883-6211

...rry J. Nistler, County Attorney
Mitchell A. Young, Deputy
Kathleen O'Rourke-Mullins, Deputy

Administrative Assistants
Susan Hill
Marty Corse

August 6, 1992

EXHIBIT 12
DATE 3-5-93
SB 275

Dennis Devries
Lake County Board of Conservation District
P.O. Box 766
Polson, Montana 59860

Dear Dennis:

Pursuant to the request of the County Supervisors and your letter of June 25, 1992, I have again reviewed the Jim Creek and Piper Creek project activities by Plum Creek for possible criminal prosecution. In doing so, I reviewed the permit, the modified permit, the numerous items of correspondence and reports, photos from Scott Rumsey and the applicable Montana law. I also reviewed this matter with Don McIntyre, legal counsel for the State Department of Natural Resources.

As I previously advised you, I am confident that the Streamside Management Act (SMA) and the Streambed and Land Preservation Act (SLPA) can and do overlap in providing jurisdiction to your conservation district in this case. Violations of either of these acts may also constitute a violation of the Montana Water Quality Act. (MWQA)

As you know, conservation districts supervise enforcement of the SLPA, the Department of State Lands supervises enforcement of the SMA, and the Department of Health and Environmental Sciences supervises enforcement of violations of the MWQA. However, violations of SMA or MWQA are civil violations with civil penalties. Complaints only need be proven by a preponderance of the evidence. Violations of SLPA are criminal and result in criminal penalties. These complaints must be proven "beyond a reasonable doubt", placing a much higher burden of proof on the conservation district in pursuing its complaint.

In assessing this case for criminal prosecution, it appears that this would be something of a "test" case as there is little or no precedent. In speaking with Mr. McIntyre, he noted that Ravalli County has attempted criminal prosecutions of this kind without success. The facts of the case are muddied by the modification of the original permit on February 4, 1992, the conflicting reports from Steve Tralles of the Department of Health and Environmental Sciences, and the conflicting reports of Bill Fischer of the Department of State Lands.

As Mr. Fischer found a civil violation of SMA, he could have sought a civil penalty, but did not. Mr. Tralles' latest report, dated July 1, 1992 states that he now finds a civil violation of MWQA, but does not indicate whether he will seek a civil penalty.

It is my opinion that a criminal charge in this case would not be successful and that the facts of this case do not make it a good "test case" to establish a precedent. Therefore, I am declining to file a criminal complaint and am recommending that your board seek a legislative amendment to MCA 75-7-123. Specifically, those portions of the penalty section which refer to the violations as being criminal should be amended to make them civil. This would greatly enhance your ability to pursue penalties for violations of your permit process.

Sincerely,

LARRY J. NISTLER
Lake County Attorney

LJN:mc

RAVALLI COUNTY ATTORNEY
COURTHOUSE BOX 5008, HAMILTON, MT 59840
(406) 363-4440

George H. Corn
County Attorney

Gerald D. Williams
Deputy Attorney

May 12, 1992

EXHIBIT 13
DATE 3-5-93
RE SB 275

Donald MacIntyre, Chief Legal Counsel
Department of Natural Resources
1520 East Sixth Avenue
Helena, MT 59620-2301

Re: State v. Varner

Dear Don:

As you know, this case was brought pursuant to Section 75-7-123, M.C.A. The case was resolved before the jury was picked, by the Defendant's agreement to pay $1,500, in return for which I dismissed the charges against him. I believe this was the best resolution of the matter that could be achieved. Don Peters of the Missoula Office of Fish, Wildlife & Parks, who is advising the Conservation District on the stream rehabilitation, felt that it was a good resolution.

I have some real concerns with using this law for criminal prosecutions in the future, however, particularly in a situation like this, where the defendant applied for a permit but then exceeded its scope.

My concern is with the vagueness of the law when used as the basis for a criminal prosecution. In support of that, I have included several jury instructions that I drafted, there being no approved or model instructions or, indeed, any cases on the same. As you can see, the jury instructions are quite vague. This would leave it open for the defense attorney to argue that the law does not put one on notice of what conduct is prohibited and, hence, the void-for-vagueness argument applies.

Further, as I feel the instructions must be drafted, the jury is required to apply the "policy" of the State of Montana to the defendant's actions. The jury is further required to determine whether or not the project "significantly altered or modified a stream." Furthermore, although I termed this last phase an affirmative defense, there is no case that says that would be required of the defendant. What's a judge to do in such a situation.

In sum, I was quite afraid, after drafting instructions, that the judge might toss the whole thing out as too vague to support a criminal prosecution. However, that could be because I don't have a deft hand at drafting instructions. Accordingly, please feel free to criticize and comment on these instructions, and please don't hesitate to tell me that I am mistaken.

One solution, which we have previously discussed, would be to include a civil penalty in the law. This would give a county attorney the option of going civil or criminal, depending on the person's actions. A civil suit also has the advantage of the State having to prove its case only by a preponderance of the evidence, as opposed to beyond a reasonable doubt in a criminal case. It is my feeling that since the person accused of committing this "crime" is not the "average" misdemeanant, jurors are usually going to be sympathetic to the person. Having a civil option removes the burden of having to prove that a well-meaning but uninformed person committed a criminal act. This is easier on jurors and prosecutors. The criminal penalty would still exist for egregious actions, so you still might want to consider clarifying language.

In closing, let me thank you for your brief. As you know, I was not able to add it on appeal because the judge ruled that the Department was not a party. Fortunately, we were able to convince the judge not to dismiss the case anyway. However, legislation could and should be drafted that would allow the Department to become a party. I believe this would be quite easy if the civil option were available.

I have taken the liberty of sending a copy of it to Stan Bradshaw, since he has expressed an interest in this matter, as well. I am also sending a copy to the Bitterroot Conservation District.

Thank you again for your help in this. Please don't hesitate to call if you have any questions.

Sincerely,

George H. Corn
Ravalli County Attorney

GHC:se
cc: Stan Bradshaw, 824 9th Avenue, Helena, MT 59601
Bitterroot Conservation District

3-5-93
SB275

A LOOK AT PERMIT #'s OF FIVE CONSERVATION DISTRICTS

CONSERVATION DISTRICT	NO. OF PERMITS ISSUED IN 1992	VIOLATIONS IN 1992*
MISSOULA CO. CD	77	2
CARBON CO. CD	48	10 (In last 5 years)
BITTERROOT CD (Ravalli Co.)	64	8
LAKE CO. CD	Approx. 25-30	4
FLATHEAD CO. CD	Approx. 200	Approx. 20-30

*IT IS IMPORTANT TO NOTE THAT NOT ALL VIOLATIONS MAKE IT TO COURT.

3-5-93
SB 225

NATURAL STREAMBED AND LAND PRESERVATION ACT (310 LAW)

A. BACKGROUND

MONTANA CONSERVATION DISTRICTS ADMINISTER THE NATURAL STREAMBED AND LAND PRESERVATION ACT FOR THE PURPOSE OF PROTECTING THE BED AND BANKS OF PERENNIAL-FLOWING STREAMS. THE ACT IS INTENDED TO MAINTAIN THE NATURAL STATE OF RIVERS AND STREAMS BY MINIMIZING EROSION AND SEDIMENTATION, WHILE RECOGNIZING THE NEEDS OF AGRICULTURE, RECREATION, AND OTHER WATER USES.

ANY PERSON CONTEMPLATING AN ACTION WHICH IMPACTS THE BED OR BANKS ADJACENT TO A STREAM MUST OBTAIN A PERMIT FROM THE LOCAL CONSERVATION DISTRICT. PROPOSED PROJECTS ARE INSPECTED BY A TEAM COMPOSED OF A DISTRICT SUPERVISOR; A DEPARTMENT OF FISH, WILDLIFE, AND PARKS REPRESENTATIVE; AND THE LANDOWNER. THE DISTRICT BOARD OF SUPERVISORS MAKES THE FINAL PERMITTING DECISION, WHICH IS SUBJECT TO ARBITRATION IF REQUESTED BY ANY MEMBER OF THE REVIEW TEAM. VIOLATORS OF THE ACT ARE SUBJECT TO A MISDEMEANOR FINE OF NOT LESS THAN $25 OR MORE THAN $500 PER DAY, IF CONVICTED. IN MOST CASES, HOWEVER, VIOLATORS REMEDY THE SITUATION BEFORE FINES BECOME NECESSARY.

B. LOCAL ADMINISTRATION

ADMINISTRATION OF THE 310 PERMIT PROGRAM HAS BEEN QUITE SUCCESSFUL BECAUSE THE EFFORT IS CONDUCTED LOCALLY BY PEOPLE WITH DIRECT KNOWLEDGE OF CONDITIONS IN THE PROJECT AREA. THE DISTRICTS ASSOCIATION WITH THE LOCAL TECHNICAL STAFF OF THE USDA SOIL CONSERVATION SERVICE; THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AND LOCAL LANDOWNERS HAS PROVEN EFFECTIVE IN MEETING THE INTENT OF THE LAW. DISTRICTS FEEL THAT COOPERATION, EDUCATION, AND LOCAL INPUT ARE MORE EFFECTIVE AND EFFICIENT THAN REGULATION AND CONFRONTATION.

C. THE CURRENT SITUATION

CONSERVATION DISTRICTS HAVE TAKEN A SERIOUS APPROACH TO THEIR 310 RESPONSIBILITIES. AS A RESULT, MUCH TIME, EFFORT, AND RESOURCES HAVE BEEN DIRECTED TOWARD THIS GROWING EFFORT.

SINCE ITS INCEPTION IN 1975, THE NUMBER OF PERMIT APPLICATIONS HAVE INCREASED SUBSTANTIALLY DUE TO PUBLIC AWARENESS. MANY DISTRICTS HAVE BEEN FORCED TO CURTAIL OTHER ACTIVITIES TO EFFECTIVELY ADMINISTER THE STAGGERING FLOW OF APPLICATIONS. IN MANY CASES, SPECIAL DISTRICT MEETINGS ARE REQUIRED TO HANDLE 310 APPLICATIONS, AND MEETINGS OFTEN LAST SIX HOURS OR MORE (OFTEN UNTIL 2:00 A.M.) BECAUSE OF PERMIT VOLUME.

TO ENCOURAGE VOLUNTARY PARTICIPATION IN THE 310 PROGRAM, DISTRICTS DO NOT LEVY A PERMIT FEE, AND NO EXTERNAL FUNDING IS AVAILABLE TO THE DISTRICTS FOR 310 ADMINISTRATION. ALTHOUGH SUPERVISORS VOLUNTEER THEIR TIME AT MEETINGS, 310 ADMINISTRATION HAS PUT SEVERE PRESSURE ON ALREADY LIMITED DISTRICT BUDGETS.

IN ADDITION TO PROCESSING 310 APPLICATIONS, SUPERVISORS OFTEN SPEND CONSIDERABLE TIME AND EFFORT ON ARBITRATION OF DECISIONS AND ENFORCEMENT OF 310 VIOLATIONS. NEEDED LEGAL SUPPORT IS USUALLY VERY DIFFICULT TO OBTAIN FROM COUNTY ATTORNEYS BECAUSE OF LOCAL PRIORITIES AND TIME REQUIREMENTS ASSOCIATED WITH ENFORCEMENT. THOSE COUNTY ATTORNEYS WHO ARE WILLING TO OVERLOOK THESE PRIORITIES AND TIME REQUIREMENTS HAVE HAD A DIFFICULT TIME PROSECUTING 310 VIOLATIONS FOR THREE REASONS:

1) IN A CRIMINAL PROSECUTION, THE STATE HAS TO PROVE ITS CASE BEYOND A REASONABLE DOUBT. IN A CIVIL CASE, ALL THAT IS NEEDED IS PROOF THROUGH A PREPONDERANCE OF EVIDENCE.

2) A JURY IS OFTEN HESITANT IN SUCH A CASE TO CALL SUCH A VIOLATION A CRIMINAL ACT.

3) THE MANNER IN WHICH JURY INSTRUCTIONS MUST BE DRAFTED REQUIRES THAT THE JURY APPLIES THE POLICY OF THE STATE OF MONTANA WITH LITTLE OR NO FIRST-HAND KNOWLEDGE OF THE SUBJECT. IN ADDITION, IT REQUIRES THE JURY TO DETERMINE WHETHER OR NOT A VIOLATOR ACTUALLY "SIGNIFICANTLY ALTERED OR MODIFIED A STREAM."

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

HOUSE NATURAL RESOURCE COMMITTEE BILL NO. SB 275

DATE 3/5/13 SPONSOR(S) SEN. WELDON

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jim Jensen	Lewis + Clark Cnty Conserv. Dist	X	
Clay Landry	Trout unlimited	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN DICK KNOX**, on March 8, 1993, at 3:00 p.m.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Toole

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 319, SB 296 and SB 339
Executive Action: SB 319, SB 225, SB 275 and SB 214

HEARING ON SB 319

Opening Statement by Sponsor:

SEN. BOB HOCKETT, SD 7, Havre, said SB 319 would exempt container sites from the solid waste management system definition. These sites are checked by local sanitarians, he said. Any objections

REP. RANEY asked **Mr. White Hawk** if there is scientific data available to those interested in the effects of dioxin. **Mr. White Hawk** said, yes. The Chemical Injury Information Network in White Sulphur Springs could provide this information.

REP. TUNBY asked **John Dilliard, Chief, Solid Waste Management Program, Department of Health and Environmental Sciences,** if there was a chance for litigation within SB 339. **Mr. Dilliard** replied there is always a chance for litigation.

REP. SWANSON asked how much time will be required for public notice. **Mr. Dilliard** said the county would have to receive notification of opposition. The bill provides for notification at the end of the environmental review process.

Closing by Sponsor:

SEN. WEEDING said the local referendum process is democratic. Montana does have an interstate compact for disposing of waste. The referendum will allow Baker area residents the chance to cast their vote in private.

EXECUTIVE ACTION ON SB 319

Motion: **REP. GILBERT MOVED SB 319 BE CONCURRED IN.**

Discussion: **Roger Thorvilson, DHES,** said there will be a shift from one governmental body to another and from the state to the local level. He added that the fiscal note was written before the bill was drafted.

REP. BROOKE said Section 2, page 4 of the bill has been eliminated. The original bill obligates DHES to license container sites.

REP. TOOLE said if green boxes are exempt, what regulation structure will be left. **Mr. Dilliard** said the county could enforce any law.

REP. GILBERT asked **Mr. Dilliard** if he has ever seen anyone dig holes around green boxes? **Mr. Dilliard** replied no, he had not.

Vote: Executive Action on HB 319 is to be continued 3-10-93.

EXECUTIVE ACTION ON SB 275

Motion: **MOTION BY REP. BROOKE THAT SB 275 BE CONCURRED IN.**

Discussion: Amendments prepared by **Doug Sternberg, Council Staff,** were presented. **EXHIBIT 9**

REP. TUNBY offered support for the amendments.

REP. BROOKE moved to segregate amendments 1, 3 and 4 from amendments 2 and 5 of the bill.

Motion/Vote: Motion to adopt Numbers 1, 3 and 4 of the amendments. Motion carried unanimously.

REP. GILBERT stated the amendment was designed to direct monies back to the general fund.

Motion/Vote: **REP. BROOKE** moved to adopt amendments 2 and 5 of the bill. Motion carried unanimously.

Motion/Vote: **MOTION THAT SB 275 BE CONCURRED IN AS AMENDED.** Motion carried with one opposing vote.

EXECUTIVE ACTION ON 214

Motion: **MOTION BY REP. GILBERT THAT SB 214 BE CONCURRED IN AS AMENDED. EXHIBIT 10**

Discussion: **REP. TUNBY** stated he understood **REP. GILBERT'S** concern, as the bill, without the amendment, extends the authority of the state too far.

REP. STOVALL asked what would be the consequence for defacing one's own cave. **REP. GILBERT** responded that you could write yourself a permission slip.

REP. STOVALL asked if it was possible to close access to a cave on your own property.

REP. RANEY suggested a new section to replace subsections 3 and 4 of the bill.

REP. HARPER requested **Michael Kakuk, EQC legal counsel**, draft a new amendment to replace sections 3 and 4 which will allow modification to cave opening terminology. **EXHIBIT 11**

Motion: **REP. FAGG** moved to adopt amendments to SB 214. **EXHIBIT 12**

Mr. Kakuk explained that the amendments would change codification within the bill.

REP. RANEY commented that a fine is insufficient penalty for defacing a cave.

REP. TOOLE said that the fine is not too high.

Vote: **TO ADOPT REP. FAGG's AMENDMENTS TO SB 214.** Motion carried unanimously.

Vote: Executive Action on SB 214 to be continued 3-10-93.

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 3-8-93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK KNOX, CHAIRMAN	✓		
REP. ROLPH TUNBY, VICE CHAIRMAN	✓		
REP. JODY BIRD	✓		
REP. VIVIAN BROOKE	✓		
REP. RUSS FAGG	✓		
REP. GARY FELAND	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓		
REP. HAL HARPER	✓		
REP. SCOTT ORR	✓		
REP. BOB RANEY	✓		
REP. DORE SCHWINDEN	✓		
REP. JAY STOVALL	✓		
REP. EMILY SWANSON	✓		
REP. HOWARD TOOLE			✓
REP. DOUG WAGNER	✓		

HR:1993
wp.rollcall.man
CS-09

HOUSE STANDING COMMITTEE REPORT

March 9, 1993

Mr. Speaker: We, the committee on Natural Resources report that Senate Bill 275 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Dick Knox, Chair

And, that such amendments read: Carried by: Rep. Fagg

1. Title, line 8.
Strike: "AS WELL AS"
Insert: "OR"

2. Title, lines 10 and 11.
Strike: "PROVIDING" on line 10 through "ASSESSMENTS;" on line 11

3. Page 1, line 18.
Strike: "(1)"

4. Page 1, line 22.
Strike: ", or both,"

5. Page 2, lines 9 through 12.
Strike: Subsection (2) in its entirety

-END-

Committee Vote:
Yes 15, No 1.